

SENATE JUDICIARY COMMITTEE AMENDMENT NO. 1 by Person

AMENDMENT NO. _____

Signature of Sponsor

FILED

Date _____

Time _____

Clerk _____

Comm. Amdt. _____

AMEND Senate Bill No. 0039

House Bill No. 0072

by deleting all amendatory language after the enacting clause and adding the following language:

SECTION 1. Tennessee Code Annotated, Title 40, Chapter 30, is amended by adding the following new part:

____-____-____. **Short title.** --This part may be referred to as the "Post-Conviction Defender Commission Act."

____-____-____. **Legislative intent.**--It is the intent of the Legislature to create the Post-Conviction Defender Commission and the Office of Post-Conviction Defender to provide for the representation of any person convicted and sentenced to death in this state who is unable to secure counsel due to indigence, and that legal proceedings to challenge such conviction and sentence may be commenced in a timely manner and so as to assure the people of this state that the judgments of its courts may be regarded with the finality to which they are entitled in the interests of justice. It is the further intent that the operation of the Post-Conviction Defender Commission and Office of Post-Conviction Defender shall be consistent with professional standards and shall not compromise independent professional judgment or create a professional or institutional conflict of interest, appearance of impropriety, breach of attorney-client confidence or secret or other violation of the Tennessee Code of Professional Responsibility or the Tennessee Code of Judicial Conduct.

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____-____-____. **Establishment; composition.**--(a) There is hereby

established a Tennessee Post-Conviction Defender Commission. The members of the commission appointed herein shall have a commitment to the constitutional rights of all individuals. The members of the commission shall be appointed with a conscious intention of reflecting a diverse mixture with respect to race, including the dominant ethnic minority population, and gender. The commission is composed of the following nine (9) members:

(1) Two (2) members appointed by the governor;

(2) Two (2) members appointed by the lieutenant governor;

(3) Two (2) members appointed by the speaker of the house of representatives; and

(4) Three (3) members appointed by the Supreme Court of Tennessee.

(b) The term of office of each member of the commission is four (4) years.

A vacancy occurring among the members of the commission before the expiration of a term shall be filled in the same manner as the original appointments. An appointment to fill a vacancy occurring before the expiration of a term is for the remainder of the unexpired term.

(c) To stagger the terms of the commission members, the initial term shall be as follows:

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(1) The initial term of the members appointed by the governor shall be one year;

(2) The initial term of the members appointed by the lieutenant governor shall be two years;

(3) The initial term of the members appointed by the speaker of the house of representatives shall be three years; and

(4) The initial term of the members appointed by the Supreme Court shall be four years.

____-____-____. **Chairperson; meetings; duties.**--(a) The members of the commission shall designate one (1) member of the commission as chairperson.

(b) Meetings of the commission may be held upon reasonable notice to the commission members by the chairperson of the commission.

(c) The commission shall appoint a qualified attorney to the Office of Post-Conviction Defender.

(d) The commission shall prepare an annual budget for the office of the post-conviction defender, administer the funds made available to the office, and oversee the expenditure of the funds.

____-____-____. **Post-Conviction Defender.**--(a) There is created the office of the post-conviction defender.

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(b) The post-conviction defender shall be appointed by the Post-Conviction Defender Commission, as provided for in Tenn. Code Ann. ____ - ____ - ____.

(c) The post-conviction defender shall be an attorney in good standing with the Tennessee Supreme Court and shall possess a demonstrated experience in the litigation of capital crimes.

(d) The post-conviction defender shall serve a term of four (4) years.

(e) Vacancies in the office of post-conviction defender shall be filled in the same manner as appointment.

(f) The principal office of the post-conviction defender shall be located in Nashville. The post-conviction defender may establish such branch offices as may, in the discretion of the post-conviction defender, be warranted to fulfill statutory duties herein.

(g) The exclusive function of the post-conviction defender's office shall be to provide legal representation to persons convicted of capital offenses. The post-conviction defender's office shall not lobby any entity, organization, or legislative body to urge either the abolition or retention of the death penalty. However, the office may respond to inquiries of the General Assembly, the Judiciary and the Executive Branch.

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(h) In the event the post-conviction defender provides direct representation to persons on direct appeal of a conviction, the post-conviction defender's office shall be prohibited from providing representation to such persons in any collateral proceeding.

____-____-____. **Duties.--**(a) It shall be the primary responsibility of the post-conviction defender to represent, without additional compensation, any person convicted and sentenced to death in this state who is without counsel and who is unable to secure counsel due to indigency or determined by a state court with competent jurisdiction to be indigent for the purpose of instituting and prosecuting collateral actions challenging the legality of the judgment and sentence imposed against such person in state court and who the court determines requires the appointment of counsel.

(b) Under limited circumstance where the post-conviction defender determines that it is in the interest of justice, the post-conviction defender may represent, without additional compensation, any person on a direct appellate review of the conviction of a capital crime if that person is without counsel and is unable to secure counsel due to indigency or is determined by a state court with competent jurisdiction to be indigent and where that state court has determined competent counsel is unavailable.

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(c) The post-conviction defender shall represent, without additional compensation, any person convicted and sentenced to death in this state who is without counsel and who is unable to secure counsel due to his indigency or is determined by a state court of competent jurisdiction to be indigent for the purpose of instituting and prosecuting collateral actions challenging the legality of the judgment and sentence imposed against such person in the federal courts in this state, the United States Court of Appeals for the Sixth Circuit, and the United States Supreme Court, only to the extent that compensation for representation and reimbursement for expenses is provided by 18 U.S.C. 3006A or any other non-state funded source.

(d) The post-conviction defender shall also:

(1) Maintain a clearinghouse of materials and a repository of briefs prepared by the post-conviction defender to be made available to public defenders and private counsel who represent indigents charged with or convicted of capital crimes.

(2) Provide continuing legal education training to public defenders, assistant post-conviction defenders and to private counsel representing indigents in capital cases, as resources are available.

(3) Provide consulting services to all attorneys representing defendants in capital cases on a non-case-specific basis.

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(4) Recruit qualified members of the private bar who are willing to provide representation in state death penalty proceedings.

____-____-____. **Conflict of interest and substitute counsel.**--If at any time during the representation of two (2) or more indigent persons, the post-conviction defender shall determine that the interests of those persons are so adverse or hostile that they cannot all be counseled by the post-conviction defender or his staff without conflict of interest, the court in which the proceeding is pending shall upon application therefor by the post-conviction defender appoint one (1) or more qualified attorneys to represent such persons.

____-____-____. **Appointment of assistants and other staff; method of payments.**--The post-conviction defender is authorized to appoint, employ, and establish, in such numbers as he or she shall determine, full-time assistant post-conviction defenders, investigators, and other clerical and support personnel who shall be paid from funds appropriated for that purpose.

____-____-____. (a) The post-conviction defender shall be paid a salary equal to the amount established by law for district public defenders.

(b) Full-time assistant post-conviction defenders shall be compensated in an amount set by the post-conviction defender in compliance with the Assistant Public Defender's pay schedule and shall be paid from funds appropriated for that purpose.

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(c) All payments of the salary of the post-conviction defender and employees of the office and payments for other necessary expenses of the office from state funds appropriated therefor shall be considered as being for a valid public purpose.

____-____-____. **Records and Reports.**--The post-conviction defender shall keep appropriate records and make periodic reports concerning caseload, funding, staffing, and salaries as requested , to the Post-Conviction Defender Commission.

SECTION 2. For administrative and organizational purposes, this act shall take effect upon becoming law, the public welfare requiring it. In all other respects, this act shall be effective on September 1, 1995.

This amendment rewrites the printed bill and would create the nine (9) member Post-Conviction Defender Commission and the Office of Post-Conviction Defender to provide representation for any indigent person convicted and sentenced to death who cannot secure counsel otherwise. The amendment sets out the composition of such commission, the recording requirements of such commission, the terms of office for such commission's members, and the duties of such members. The amendment also delineates the duties of the Post-Conviction Defender.